(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

WRIT PETITION NO. 33 OF 2004

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr. S.D. Lotlikar, Senior Advocate with S. Naik, Advocate for the Petitioner.

Mr.V.A. Lawande, Advocate for the Respondent No.1.

Mr. C.A. Coutinho, Advocate for the Respondent No.2.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Addl. Govt. Advocate for the Respondent No.3.

CORAM : S.A. BOBDE &
N.A. BRITTO, JJ.

DATE: 7TH JUNE, 2004.

P.C.:

The petitioner questions the legality of the construction made by the respondent No.1 in Survey No.12/1 at Tisca of Village Dabhal, Sanguem Taluka and makes a grievance about non-compliance of the Order dated 3rd July, 2002 by which the Deputy Collector of Panchayats, South Goa, directed the Panchayat to decide whether the plan is in

accordance with the Panchayat Raj Act and to take a further decision as to regularisation of the structure.

The petitioner had approached the Deputy Director of Panchayats by alleging that the construction in question could not have been made legally by the respondent No.1. The Deputy Director passed the following Order :-

" The Respondent No.2, the Panchayat is directed to process the file of the Respondent No.1 within a period of 90 days from the receipt of this order and to decide as to whether the plan is in accordance with the Panchayat Raj Act and the Rules applicable thereto and if the Panchayat decides that the construction is illegal to take a further decision as to whether the same can be regularised under the Act and Rules or not and therefore take the necessary action as per the

law. The complaint filed by the applicant is accordingly disposed off. "

Thereafter it appears the Order was not complied with. Therefore the petitioner applied for enforcement of this Order. On this application the Deputy Director held that he has become functus officio and therefore dismissed the petitioner's application.

In the meanwhile, according to the respondent No.1, the plan has been regularised and the Town and Country Planning Department has given the approval. The approval of the P.W.D. is however awaited. According to the learned counsel for the petitioner, this does not suffice, since the licence has not been given by the Panchayat. In short, there is a serious existing dispute about the legality and validity of the construction.

Having considered the matter for sometime, we are of the view that the petitioner has a remedy against the Order dated 9.9.2003 passed by the Deputy Director of Panchayats, South Goa, refusing to enforce his earlier order. That remedy is by way of an appeal under Section 166(7).

The learned Advocate General states that if such an appeal is filed by the petitioner within a period of 15 days from today, it shall be entertained by the appellate authority.

We, accordingly, do not consider it appropriate to exercise our jurisdiction under Art.226 of the Constitution of India in this matter. We, therefore, direct the appellate authority to decide the appeal, if filed by the petitioner, within a period of 15 days of the filing thereof. All contentions of the parties are kept open. The

appellate authority shall decide the appeal without raising any question of limitation.

Writ Petition disposed of in the above terms.

S.A. BOBDE, J.

N.A. BRITTO, J.

sl.